

Cayman Islands set to implement Cape Town Convention

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Context

The Cape Town Convention was opened for signature in 2001. The Aircraft Protocol came into force in 2006. Together, they establish an international framework for the creation and registration of international interests in qualifying aircraft, engines and helicopters.

An 'international interest' means any interest in an aircraft object held by a creditor which is either: (a) granted by the chargor under a security agreement; or (b) vested in a person who is the conditional seller under a title reservation agreement; or (c) vested in a person who is the lessor under a leasing agreement. To determine whether an interest falls within one of these three categories, the Convention's own rules of interpretation and definitions are applied (as opposed to the domestic law of any Convention State or territory).

Although registration on the International Registry is not a prerequisite to the creation or perfection of an international interest, it does permit creditors who register their interests on the International Registry to guarantee the priority of their claims against other parties. Priority is based upon the order of registration. In addition, registration provides creditors with an internationally recognised set of rights in the event of a debtor's default or insolvency.

Non-registration of an international interest means that unregistered interest is subordinate to competing registered interests (even if the holder of any registered interest has knowledge of the unregistered interest at the time of creation or registration).

New Legislation

The United Kingdom opted to ratify the Convention and Protocol in 2014. The UK Cape Town Regulations are expected to come into effect in the summer of 2015. Consequently, the Cayman Islands (a British overseas territory) is now preparing to implement the Convention and Protocol.

The extension of the Convention to the Cayman Islands will entitle the Cayman Islands to international recognition as a territorial unit of a contracting state to the Convention and to recognition of the declarations deposited by the United Kingdom government on behalf of the Cayman Islands government with the International Institute for the Unification of Private Law (Unidroit).

The International Interests in Mobile Equipment (Cape Town Convention) Bill was passed on 17 April 2015 and could come into force in the Cayman Islands as early as August 2015. This legislation will also repeal and replace the previous Cayman Islands Cape Town Convention Law, 2009, which sought to mirror Cape Town rules under domestic legislation, pending ratification of the Convention and Protocol by the United Kingdom.

As extended to the Cayman Islands, the Convention will meet the



requirements for the Cayman Islands to have made qualifying declarations, as defined in the OECD Aircraft Sector Understanding.

Cape Town Declarations

As part of the Cayman Islands implementation process, the following key declarations will apply:

- **Alternative A:** The Cayman Islands will apply Article XI, Alternative A – ie. the so-called creditor-friendly 'hard' version of the insolvency rules, akin to Section 1110 of the US Bankruptcy Code. Under this alternative, the debtor must deliver possession of the aircraft object to the creditor by the end of a specified waiting period. The Cayman Islands declarations specify that the waiting period for this purpose is 60 days.
- **Interim Relief:** Speedy interim relief will be available to a creditor who adduces evidence of a default within 10 working days of the application for relief being filed.
- **Self Help:** All remedies available to a creditor under the Convention that do not expressly require a court application will be exercisable without leave to the court or other court action.

Summary of Benefits

These developments will provide the following benefits to players in the international aviation market:

- **Cape Town Discount:** by virtue of the declarations made in the Cayman Islands implementing legislation, qualifying transactions will be eligible for discounted export credit agency financing.
- **Airframe and Engine Registrations:** creditors will be able to register

international interests in airframes and engines separately.

- Certainty and Uniformity: the Cape Town Convention will further enhance the desirability of the Cayman Islands as a leading jurisdiction for aviation finance, by incorporating a registration-based system of internationally recognised interests and insolvency rules.

Conclusion

Due to its political and economic stability, common law legal system, experienced financial and legal services sector, and its status as a tax neutral platform given the absence of any Cayman Islands income tax, corporate tax, capital gains tax or withholding tax on any cash flows, the Cayman

Islands is a leading jurisdiction for aviation finance transactions.

Cayman Islands special purpose vehicles frequently fulfill roles as borrowers, owners, lessors and/or security providers in cross-border aircraft transaction structures for the financing and leasing of commercial aircraft. Bankruptcy-remote features such as the orphan trust structure seek to enhance the security of lenders by having a Cayman special purpose vehicle ring-fenced from other creditors.

Where there is a financing structure which involves a Cayman Islands entity owning an aircraft, which is in turn leased to an operator in another jurisdiction, this will provide sufficient nexus for the Convention to apply.